

After Recording Return to:
City of Frisco
Attention: City Manager
6101 Frisco Square Boulevard
Frisco, Texas 75034

**DEVELOPMENT AGREEMENT
BETWEEN VISTA FRANCHISE HOLDINGS, LLC
AND THE CITY OF FRISCO, TEXAS**

(S.H. 121 and Independence Retail Center – Offsite Sanitary Sewer Improvements)

THIS DEVELOPMENT AGREEMENT (this "Agreement"), is made and entered into this ____ day of _____, 2008 (the "Effective Date of the Agreement"), by and between the City of Frisco, Texas, a Texas home-rule municipal corporation ("Frisco") and Vista Franchise Holdings, LLC, a Texas limited liability company ("Developer").

WHEREAS, Developer is the owner of that certain tract of land situated in the City of Frisco, Collin County, Texas, containing 14.800 acres, being part of the Jacob Baccus Survey, Abstract No. 53 and being part of that certain tract of land described in deed to 121 Vista Partners, LP filed for record under the County Clerk's File No. 20071016001420180, Deed Records, Collin County, Texas (D.R.C.C.T.) as more particularly described and depicted on Exhibit "A," attached hereto and incorporated herein for all purposes (the "Property"); and

WHEREAS, pursuant to the proposed Site Plan for development of the Property (the "121 and Independence Retail Center"), as more particularly described and depicted on Exhibit "B," attached hereto and incorporated herein for all purposes (the "Retail Center Site Plan"), Developer has planned a commercial development on a portion of the Property that will consist of a Wingate Hotel by Wyndham with four-stories, at least one hundred (100) rooms, portico, indoor pool, at least fifteen (15) full time employees and with a minimum commercial building permit value of not less than \$8,300,000.00, which does not include land (the "Hotel Project"); and

WHEREAS, Developer has requested that as part of constructing the Hotel Project, Developer would pay for the re-design of approximately three thousand eight hundred fifty linear feet (3,850') of a fifteen-inch (15") sanitary sewer line to a twenty-one inch (21") sanitary sewer line and all appurtenances thereto, pay for the design of an additional one thousand one hundred fifty linear feet (1,150') of a twenty-one inch (21") sanitary sewer line and all appurtenances thereto, pay for the design of upsizing approximately four hundred sixty linear feet (460') of an existing twenty-seven inch (27") sanitary sewer line extending from the Rowlett Creek Metering Station to an upsized thirty-six inch (36") sanitary sewer line and all appurtenances thereto, and pay for the design of boring improvements necessary for the construction of the future extension of the sanitary sewer line across Independence Parkway and all appurtenances thereto (the "Offsite Sanitary Sewer Improvements"), and in return has requested that Frisco consider constructing the Offsite Sanitary Sewer Improvements upon completion of the design; and

WHEREAS, the Frisco Economic Development Corporation (the "FEDC") is desirous of financially assisting Frisco in the construction costs of the Offsite Sanitary Sewer Improvements; and

WHEREAS, Frisco has investigated and determined that it would be advantageous and beneficial to Frisco and its citizens to construct the Offsite Sanitary Sewer Improvements as provided herein; and

WHEREAS, Developer and Frisco agree that Developer may fulfill its obligation to pay Sanitary Sewer Impact Fees for the Developer's Site Plan in the manner set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions contained in this Agreement, Frisco and Developer agree as follows:

1. **Findings Incorporated.** The findings set forth are made a part of this Agreement as if set forth herein verbatim.

2. **Land Subject to Agreement.** The land that is subject to this Agreement is the Property. Developer represents that it is the sole owner of the Property.

3. **Design of Sanitary Sewer Improvements.** Developer has engaged Bury + Partners Engineering Solutions to design the Offsite Sanitary Sewer Improvements and agrees to utilize said firm to complete the design unless otherwise agreed to in writing by Frisco. Developer, at its sole cost and expense, shall complete the design of the Offsite Sanitary Sewer Improvements, and shall submit the initial construction plans to Frisco for review no later than December 12, 2008. Upon receipt of review comments by Frisco, Developer shall be responsible for ensuring that all of Frisco's comments are incorporated into the construction plans for the Offsite Sanitary Sewer Improvements by or before January 12, 2009.

4. **Dedications / Conveyances / Easements.** Developer, at its sole cost and expense, shall secure the dedication of all easements necessary to construct the Offsite Sanitary Sewer Improvements, and shall arrange for the preparation of all necessary easement documents, the form of which must be approved in writing by Frisco (the "Easement Documents"). At a minimum, Developer shall perform, or cause to be performed, a title search on each parcel for which an easement will be necessary for the construction of the Offsite Sanitary Sewer Improvements and provide Frisco with an official, executed "Title Search Report" for each said parcel prior to completing and securing the Easement Documents. Developer shall provide Frisco with the executed Easement Documents no later than December 31, 2008.

5. **Construction of Sanitary Sewer Improvements.** Developer and Frisco agree that the Opinion of Probable Construction Cost for the construction of the Offsite Sanitary Sewer Improvements totals One Million Six Hundred Seventy-One Thousand Four Hundred Seventy-Three and 00/100 Dollars (\$1,671,473.00), as more particularly described and depicted on Exhibit "C", attached hereto and incorporated herein for all purposes (the "Offsite Sanitary Sewer Improvements OPCC."). If Developer complies with the design milestones as stated in Paragraph 3, and complies with the dedication of the required easements and the provision of the Easement Documents to Frisco as stated in Paragraph 4, Frisco agrees to complete the procurement process for the construction of the Offsite Sanitary Sewer Improvements in accordance with State Law, and place a recommendation for the Award of Bid as an item for consideration on the Frisco City Council's February 10, 2009 Meeting Agenda. Additionally,

Frisco agrees to place as an item for consideration on the Frisco City Council's February 10, 2009 Meeting Agenda a Resolution authorizing the City Manager to execute a Standard Form Agreement for Construction Services (the "Construction Agreement") by and between Frisco and the recipient of the Frisco City Council's Award of Bid to construct the Offsite Sanitary Sewer Improvements. Frisco, at its sole discretion, may decline to execute the Construction Agreement for any reason or no reason at all. Upon execution of the Construction Agreement, Frisco shall notify Developer in writing that the Notice to Proceed Letter has been issued for the construction of the Offsite Sanitary Sewer Improvements. Frisco agrees to pay all costs associated with the construction of the Offsite Sanitary Sewer Improvements (the "Offsite Sanitary Sewer Improvements Construction Costs") and agrees to diligently pursue completion of the Offsite Sanitary Sewer Improvements once commenced.

6. **Construction of Hotel Project.** Developer shall, in conformance with all applicable Frisco regulations, rules, procedures and ordinances, as they exist, may be amended or in the future arising, obtain a construction permit issued by Frisco for the Hotel Project (the "Construction Permit for the Hotel Project"), no later than February 10, 2009 (the "Construction Permit Milestone Date"). Additionally, Developer shall obtain a permanent Certificate of Occupancy issued by Frisco for the Hotel Project, no later than July 1, 2010.

7. **Sanitary Sewer Impact Fees for the Retail Center Site Plan.** The estimated Sanitary Sewer Impact Fees for the Retail Center Site Plan total One Hundred Seventy-Seven Thousand Eighty-Eight and 00/100 Dollars (\$177,088.00), as more particularly described and depicted on **Exhibit "D,"** attached hereto and incorporated herein for all purposes (the "Estimated Sanitary Sewer Impact Fees"). As partial consideration for Frisco's accelerated construction of the Offsite Sanitary Sewer Improvements and upon the execution of the Agreement, Developer agrees to tender to Frisco the Estimated Sanitary Sewer Impact Fees as a pro-rata payment towards the construction of the Offsite Sanitary Sewer Improvements. In accordance with all Frisco regulations, rules, procedures and ordinances, as they exist, may be amended or in the future arising, Frisco shall assess actual Sanitary Sewer Impact Fees for subdivision of the Retail Center Site Plan at the time of final plat for each subdivided parcel, and shall collect the assessed Sanitary Sewer Impact Fees prior to the issuance of a building permit for each subdivided parcel. Frisco agrees that Developer shall be eligible for pro rata reimbursements lawfully collected by Frisco from developers of each subdivided parcel of the Retail Center Site Plan, provided: (i) such reimbursements shall not exceed the amount of the Estimated Sanitary Sewer Impact Fees less the assessed Sanitary Sewer Impact Fees for the Hotel Project; (ii) Developer submits to Frisco, within sixty (60) calendar days of any payment of Sanitary Sewer Impact Fees for the Retail Center Site Plan, a written request for the pro rata reimbursement, or portion thereof; and (iii) Developer agrees that its right to receive the pro rata reimbursements described herein shall be governed by the then existing ordinances and shall expire upon the earlier of: (1) its receipt of the total amount of the allowable pro rata reimbursements; (2) five (5) years from the date Frisco accepts the Offsite Sanitary Sewer Improvements. Frisco shall not execute the Construction Agreement until Developer submits payment for Estimated Sanitary Sewer Impact Fees in accordance with this **Paragraph**.

8. **FEDC Financial Contribution to Construction Costs of Offsite Sanitary Sewer Improvements.** Developer and the FEDC have previously executed a Performance Agreement

(the "Performance Agreement") for the construction of the Hotel Project. FEDC desires to enter into an Interlocal Agreement with Frisco (the "Interlocal Agreement") to contribute a one-time payment of One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) for the construction costs associated with the Offsite Sanitary Sewer Improvements (the "FEDC Contribution"). This Agreement is strictly contingent upon the approval and execution of the Interlocal Agreement by Frisco and the FEDC. Upon execution of the Agreement, Developer shall submit a written request to the FEDC to terminate the Performance Agreement. Upon the FEDC's approval to terminate the Performance Agreement and to execute the Interlocal Agreement, Frisco shall place on the next available Frisco City Council meeting agenda the consideration of the Interlocal Agreement. Upon Frisco's issuance of a Notice to Proceed Letter for the construction of the Offsite Sanitary Sewer Improvements, FEDC shall tender to Frisco the FEDC Contribution. Notwithstanding anything to the contrary herein, Frisco shall not be obligated to commence construction of the Offsite Sanitary Sewer Improvements unless all conditions set forth herein have been fully satisfied.

9. **Default.** If Developer fails to comply with the provisions of this Agreement, Frisco shall have all of the following remedies, in addition to Frisco's other rights and remedies:

- a. to refuse to issue building permits for the Property; and/or
- b. to refuse to issue a Certificate of Occupancy for any building on the Property; and/or
- c. to seek reimbursement by Developer of the difference between the actual construction costs paid by Frisco, less the total contributions of the Hotel Project Sanitary Sewer Impact Fees and the FEDC Contribution; and/or
- d. to file this instrument in the Land Records of Collin County as lien and/or encumbrance on the Property; and/or
- e. to refuse to accept any portion of any public improvements on the Property and/or associated with the development of the Property; and/or
- f. to seek specific enforcement of this Agreement.

Additionally, if Developer fails to comply with the terms and conditions of this Agreement, ~~FEDC reserves the right to seek reimbursement of the FEDC Contribution from~~ Developer. In the event Frisco fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement as its sole and exclusive remedy.

10. **Covenant Running with the Land.** This Agreement shall be a covenant running with the land and the Property and shall be binding upon Developer, its officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees. In addition, the parties shall cause this Agreement to be filed in the Land Records of Collin County, Texas.

11. INDEMNIFICATION. DEVELOPER, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES, DOES HEREBY AGREE TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS FRISCO AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), CAUSED BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL ACT AND/OR OMISSION OF THE APPLICABLE DEVELOPER, ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, TRUSTEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FOR WHOM SUCH DEVELOPER IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF FRISCO (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO, BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST FRISCO BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN DEVELOPER, AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE DEVELOPER, INCLUDING BUT NOT LIMITED TO, ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS' COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. IN THIS CONNECTION, DEVELOPER, INDIVIDUALLY AND ON BEHALF OF ITS OFFICERS, DIRECTORS, PARTNERS, CONTRACTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES AND/OR TRUSTEES, AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS FRISCO, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES FOR FRISCO'S, ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES, AND/OR EMPLOYEES, OWN NEGLIGENCE, IN WHATEVER FORM, ARISING OUT OF ANY ACT OR OMISSION, TAKEN OR FAILED TO BE TAKEN BY FRISCO, RELATING IN ANY MANNER TO THIS AGREEMENT, IN WHOLE OR IN PART, REGARDLESS OF CAUSE OR ANY CONCURRENT OR CONTRIBUTING FAULT OR NEGLIGENCE OF FRISCO. DEVELOPER IS EXPRESSLY REQUIRED TO DEFEND FRISCO AGAINST ALL SUCH CLAIMS, AND FRISCO IS REQUIRED TO REASONABLY COOPERATE AND ASSIST DEVELOPER IN PROVIDING SUCH DEFENSE; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT FRISCO (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE

"JUDGMENT"), THEN DEVELOPER IS NOT REQUIRED TO INDEMNIFY OR DEFEND FRISCO TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO FRISCO FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT FRISCO IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, FRISCO AGREES TO REIMBURSE DEVELOPER FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY DEVELOPER THAT ARE ATTRIBUTABLE TO FRISCO'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO DEVELOPER WITHIN ONE HUNDRED TWENTY (120) DAYS OF THE DATE OF THE JUDGMENT.

IN ITS SOLE DISCRETION, FRISCO SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY THE DEVELOPER IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY FRISCO, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY FRISCO IN WRITING. FRISCO RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER FRISCO IS UNDER NO OBLIGATION TO DO SO. ANY SUCH OBLIGATION BY FRISCO IS NOT BE CONSTRUED AS A WAIVER OF DEVELOPER'S OBLIGATION TO INDEMNIFY FRISCO PURSUANT TO THIS AGREEMENT. DEVELOPER SHALL RETAIN FRISCO-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF FRISCO'S WRITTEN NOTICE THAT FRISCO IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF DEVELOPER FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, FRISCO SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND DEVELOPER SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY FRISCO.

THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12. PARTIES' ACKNOWLEDGEMENT OF FRISCO'S COMPLIANCE WITH FEDERAL AND STATE CONSTITUTIONS, STATUTES AND CASE LAW AND FEDERAL, STATE AND LOCAL ORDINANCES, RULES AND REGULATIONS/DEVELOPER'S WAIVER AND RELEASE OF CLAIMS FOR OBLIGATIONS IMPOSED BY THIS AGREEMENT.

A. DEVELOPER ACKNOWLEDGES AND AGREES THAT:

- (I) THE CONVEYANCES, DEDICATIONS, EASEMENTS AND/OR PAYMENT OF MONEY REQUIRED BY THIS AGREEMENT TO BE PERFORMED BY DEVELOPER, IN WHOLE OR IN PART, DO NOT CONSTITUTE A:
 - (A) TAKING UNDER THE TEXAS OR UNITED STATES CONSTITUTION;
 - (B) VIOLATION OF THE TEXAS WATER CODE, AS IT EXISTS OR MAY BE AMENDED;
 - (C) NUISANCE; AND/OR
 - (D) CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE

LAW AND/OR FEDERAL, STATE AND/OR LOCAL
ORDINANCE, RULE AND/OR REGULATION.

- (II) THE AMOUNT OF DEVELOPER'S FINANCIAL OR INFRASTRUCTURE CONTRIBUTION (AFTER RECEIVING ALL CONTRACTUAL OFFSETS, CREDITS AND REIMBURSEMENTS, IF ANY) AGREED TO IN THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE DEMAND THAT SUCH DEVELOPER'S DEVELOPMENT PLACES ON FRISCO'S INFRASTRUCTURE.
- (III) DEVELOPER HEREBY AGREES THAT ANY PROPERTY WHICH IT CONVEYS TO FRISCO PURSUANT TO THIS AGREEMENT IS ROUGHLY PROPORTIONAL TO THE BENEFIT RECEIVED BY DEVELOPER FOR SUCH LAND, AND DEVELOPER HEREBY WAIVES ANY CLAIM THEREFORE THAT IT MAY HAVE. DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ALL PREREQUISITES TO SUCH A DETERMINATION OF ROUGH PROPORTIONALITY HAVE BEEN MET, AND THAT ANY VALUE RECEIVED BY FRISCO RELATIVE TO SAID CONVEYANCE ARE RELATED BOTH IN NATURE AND EXTENT TO THE IMPACT OF THE DEVELOPMENT OF DEVELOPER'S ADJACENT PROPERTY ON FRISCO'S INFRASTRUCTURE. DEVELOPER AND FRISCO FURTHER AGREE TO WAIVE AND RELEASE ALL CLAIMS ONE MAY HAVE AGAINST THE OTHER RELATED TO ANY AND ALL ROUGH PROPORTIONALITY AND INDIVIDUAL DETERMINATION REQUIREMENTS MANDATED BY THE UNITED STATES SUPREME COURT IN *DOLAN V. CITY OF TIGARD*, 512 U.S. 374 (1994), AND ITS PROGENY, AS WELL AS ANY OTHER REQUIREMENTS OF A NEXUS BETWEEN DEVELOPMENT CONDITIONS AND THE PRECEDENT IMPACT OF THE PUBLIC INFRASTRUCTURE.
- (IV) DEVELOPER SHALL INDEMNIFY AND HOLD HARMLESS FRISCO FROM ANY CLAIMS AND SUITS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO DEVELOPER'S RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEEES, AND/OR TRUSTEES, BROUGHT PURSUANT TO THIS PARAGRAPH.
- B. DEVELOPER RELEASES FRISCO FROM ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED ON EXCESSIVE OR ILLEGAL ACTIONS.
- C. DEVELOPER WAIVES ANY CLAIM FOR DAMAGES AND/OR REIMBURSEMENT AGAINST FRISCO FOR A VIOLATION OF ANY FEDERAL AND/OR STATE CONSTITUTION, STATUTE AND/OR CASE

**LAW AND/OR FEDERAL, STATE AND/OR LOCAL ORDINANCE, RULE
AND/OR REGULATION.**

**D. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS
AGREEMENT.**

13. Vested Rights / Chapter 245 Waiver. The signatories hereto shall be subject to all ordinances of Frisco, whether now existing or in the future arising. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this Agreement shall constitute a "permit" as defined in Chapter 245, Texas Local Government Code, and nothing in this Agreement provides Frisco with fair notice of any Developer's project. **DEVELOPER WAIVES ANY STATUTORY CLAIM UNDER CHAPTER 245 OF THE TEXAS LOCAL GOVERNMENT CODE UNDER THIS AGREEMENT. THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.**

14. Notice. Any notice required to be sent under this Agreement must be in writing and may be served by depositing same in the United States Mail, addressed to the party to be notified, postage pre-paid and registered or certified with return receipt requested, or by delivering the same in person to such party via hand-delivery service, Federal Express or any courier service that provides a return receipt showing the date of actual delivery of same to the addressee thereof. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Frisco:	City of Frisco Attention: City Manager 6101 Frisco Square Boulevard, 5 th Floor West Frisco, Texas 75034
With Copy to:	Abernathy, Roeder, Boyd and Joplin, P.C. Attention: Rebecca Brewer 1700 Redbud Blvd., Suite 300 McKinney, Texas 75070-1210
If to Developer:	Vista Franchise Holdings, LLC Attention: Bob Reid, Manager 401 W. President George Bush Highway, Suite 108 Richardson, Texas 75080

15. Attorney's Fees. In any legal proceeding brought to enforce the terms of this Agreement the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

16. Incorporation of Recitals. The representations, covenants and recitations set forth in the foregoing recitals of this Agreement are true and correct and are hereby incorporated into

the body of this Agreement and adopted as findings of Frisco and the authorized representative of Developer.

17. **Developer's Warranties / Representations.** All warranties, representations and covenants made by Developer in this Agreement or in any certificate or other instrument delivered by Developer to Frisco under this Agreement shall be considered to have been relied upon by Frisco and will survive the satisfaction of any fees under this Agreement, regardless of any investigation made by Frisco or on Frisco's behalf.

18. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the matters contained herein and may not be modified or terminated except upon the provisions hereof or by the mutual written agreement of the parties hereto.

19. **Venue.** This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

20. **Consideration.** This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

21. **Counterparts.** This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original if properly executed.

22. **Authority to Execute.** The individuals executing this Agreement on behalf of the respective parties below represent to each other and to others that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for an on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the party for whom the individual signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.

23. **Savings / Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

24. **Representations.** Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had an opportunity to confer with its counsel.

25. **No Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement, save and except the FEDC with regard to **Paragraphs 8-9.**

26. **Assignment / Binding Effect**. This Agreement is assignable upon the following conditions:

- b. the assignment of the Agreement must be evidenced by a recordable document. The recordable document referred to in this paragraph is subject to the reasonable approval of Frisco;
- c. at the time of assignment, Developer must give the assignee written notice that any and all obligations, covenants and/or conditions contained in the Agreement will be assumed solely and completely by the assignee. The notice provided pursuant to this paragraph is subject to the reasonable approval of Frisco;
- d. Developer will file any approved, executed assignments in the Land Records of Collin County, Texas; and
- e. Developer shall provide Frisco with the name, address, phone number, fax number and the name of a contact person for the assignee.

27. **Indemnification**. The parties agree that the Indemnity provisions set forth in **Paragraphs 11 and 12** herein are conspicuous, and the parties have read and understood the same.

28. **Construction**. All construction described herein shall be subject to and in compliance with all ordinances of Frisco, whether now or existing, hereafter amended or in the future arising. Evidence of any bonds required by Section 212.073 of the Texas Local Government Code, or other applicable law, shall be provided by Developer to Frisco.

29. **Conveyances**. All conveyances required herein shall be made in a form acceptable to Frisco and free and clear of any and all encumbrances.

30. **Waiver**. Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance.

31. **Reference to Developer**. When referring to "Developer" herein, this Agreement shall refer to and be binding upon all parties within the herein-defined term Developer, and their officers, directors, partners, employees, representatives, contractors, agents, successors, assignees, vendor, grantees and/or trustees.

32. **Miscellaneous Drafting Provisions**. This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest date as reflected by the signatures below.

/SIGNATURES TO FOLLOW./

FRISCO:

City of Frisco, Texas

By: _____
George Purefoy, City Manager

DEVELOPER:

VISTA FRANCHISE HOLDINGS, LLC
a Texas limited liability company

By: Bob Reid
Bob Reid, Manager

Agreed and Consented to as a Third Party Beneficiary solely as to
Paragraphs 8-9:

Frisco Economic Development Corporation

By: Jim Grandy
~~Jim Grandy, Executive Director~~ **PRESIDENT**

STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2008.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

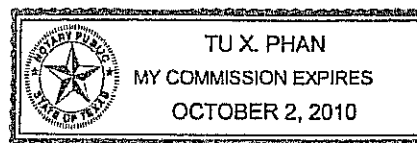
COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **BOB REID**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 20th DAY OF November, 2008.

Tu X. Phan

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 10/2/2010

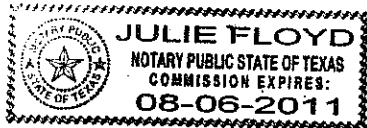


STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **JIM GANDY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 21st DAY OF November, 2008.



Julie Floyd
NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 8-6-2011

EXHIBIT "A"

DESCRIPTION OF THE PROPERTY

[Four (4) Pages Attached]

WHEREAS 121 VISTA PARTNERS, LP, a Texas limited partnership, is the owner of a tract of land located in the Jacob Baccus Survey, Abstract No. 53, City of Frisco, Collin County, Texas, and being all of Lot 2, Block A, S.H. 121 and Independence Retail, an addition to the City of Frisco, Collin County, Texas, according to the Conveyance Plat filed for record in Volume 2008, Page 524, Plat Records, Collin County, Texas (P.R.C.C.T.), being all of a called 14.800 acre tract of land described in the deed to said 121 Vista Partners, LP, filed for record under the County Clerk's File No. 20071016001420180, Deed Records, Collin County, Texas (D.R.C.C.T.); and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod found with a cap stamped "Bury+Partners" at the intersection of the northwesterly right-of-way line of said State Highway No. 121 (a variable width public right-of-way), as described in the deed to the State of Texas filed for record in Volume 4571, Page 1580, D.R.C.C.T. and the east right-of-way line of Independence Parkway (a variable width public right-of-way as described in the deed to the City of Frisco in Volume 6053, Page 4340, D.R.C.C.T. and as shown on the plat filed for record in Cabinet N, Page 612, P.R.C.C.T.;

THENCE along the east right-of-way line of said Independence Parkway as follows;

North 00° 22' 51" West, a distance of 199.84 feet, to a 5/8 inch iron rod found with a cap stamped "P.B.S. & J.";

North 04° 11' 43" West, a distance of 150.33 feet, to a 5/8 inch iron rod found with a cap stamped "P.B.S. & J.";

North 00° 22' 51" West, a distance of 316.61 feet, to a 5/8 inch iron rod found with a cap stamped "P.B.S. & J.";

North 04°35' 26" East, a distance of 100.46 feet, to a 5/8 inch iron rod set with a cap stamped "Bury+Partners" for corner, being in the south line of Block A, Lot 1, of the aforementioned S.H. 121 and Independence Retail Addition;

THENCE North 89° 37' 09" East, departing the east right-of-way line of said Independence Parkway and along the south line of said Lot 1, a distance of 267.33 feet, to a 5/8 inch iron rod found with a cap stamped "Bury+Partners";

THENCE North 00° 22' 51" West, along the east line of said Lot 1, a distance of 257.31 feet, to a 5/8 inch iron rod found with a cap stamped "Bury+Partners" on the south right-of-way line of Lebanon Road, as described in the Variable Width Street

Easement to the City of Frisco, filed for record in Volume 5051, Page 1712, D.R.C.C.T.;

THENCE along the south right-of-way line of said Lebanon Road as follows;

North 85° 52' 25" East, a distance of 36.30 feet, to a 5/8 inch iron rod found with a cap stamped "Bury+Partners";

North 89° 41' 16" East, a distance of 50.00 feet, to a 5/8 inch iron rod found with a cap stamped "Bury+Partners";

North 83° 58' 38" East, a distance of 150.75 feet, to a 3-1/4 inch diameter aluminum monument stamped
"Bury+Partners" on a 5/8 inch iron rod found in concrete and secured with a secured access cover;

North 89° 41' 16" East, a distance of 59.36 feet, to a 1/2 inch iron rod found with a cap stamped "G&A CONSULTS", being the northeast corner of said Lot 2 and being the northwest corner of Block A, Lot 1R, of the Redi-Mix II Addition, an Addition to the City of Frisco, Collin County, Texas according to the Re-plat filed for record in Volume 2008, Page 524, P.R.T.C.T.;

THENCE along the common line of said Lot 2 and Lot 1R as follows;

South 05° 55' 59" West, a distance of 66.53 feet to a 5/8 inch iron rod found with a cap stamped "Bury+Partners";

South 81° 16' 44" East, a distance of 54.59 feet, to a 1/2 inch iron rod found with a cap stamped "RPLS 4701";

South 64° 28' 12" East, a distance of 43.11 feet, to a 1/2 inch iron rod found with a cap stamped "RPLS 4701";

South 25° 59' 00" East, a distance of 207.83 feet, to a 5/8 inch iron rod found with a cap stamped "SPARR SURVEYING";

South 06° 03' 57" East, a distance of 64.25 feet, to a 1/2 inch iron rod found for corner;

North 88° 16' 16" East, a distance of 147.07 feet to a 5/8 inch iron rod found with a cap stamped "Bury+Partners",
being the southeast corner of said Lot 1R and being in the west line of Block A, Lot 1, Redi-Mix Addition, an addition
to the City of Frisco, Collin County, Texas, according to the Final Plat filed for record in Cabinet N, Page 163,
P.R.C.C.T.;

THENCE along the common line of said Lot 2 and said west line of said Block A, Lot 1, Redi-Mix Addition, as follows;

South 34° 27' 32" East, a distance of 79.00 feet, to a point for corner on top of a precast concrete wall, from which a
1/2 inch iron rod found with a cap stamped "HAT-2826" bears South 64° 22' 22" West, a distance of 5.29 feet;

South 57° 39' 48" East, a distance of 52.06 feet, to a point for corner on top of precast concrete wall from which a
1/2 inch iron rod found with a cap stamped "HAT-2826" bears South 62° 14' 48" West, a distance of 5.59 feet;

South 07° 42' 01" East, a distance of 205.80 feet, to a 1/2 inch iron rod found with a cap stamped "RPLS 4701" on
the northwesterly right-of-way line of aforementioned State Highway No. 121;

THENCE along the northwesterly right-of-way line of said State Highway No. 121 as follows;

South 70° 37' 26" West, a distance of 407.64 feet, to an aluminum Texas Department of Transportation right-of-way monument found (hereinafter referred to as a TXDOT monument found);

South 63° 37' 36" West, a distance of 437.59 feet, to a TXDOT monument found;

South 64° 22' 45" West, a distance of 213.69 feet, to a 3-1/4 inch diameter aluminum monument stamped

"Bury+Partners" on a 5/8 inch iron rod found in concrete inside a secured access cover;

North 62° 39' 37" West, a distance of 29.82 feet, to a 5/8 inch iron rod found with a cap stamped "Bury+Partners";

South 89° 40' 12" West, a distance of 4.00 feet, to the POINT OF BEGINNING and containing a computed area of 14.798 acres (644,604 square feet).

EXHIBIT "B"

***SITE PLAN FOR S.H. 121 AND INDEPENDENCE RETAIL
BLOCK A, LOTS 2-3
JACOB BACCHUS SURVEY, ABSTRACT No. 53***

[One (1) Page Attached]

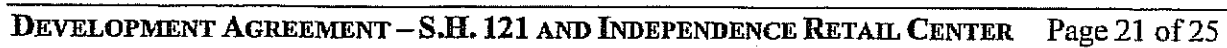


EXHIBIT "C"

OPINION OF PROBABLE CONSTRUCTION COST

OFFSITE SANITARY SEWER IMPROVEMENTS

[One (1) of Page Attached]

EXHIBIT "C"
OPINION OF PROBABLE CONSTRUCTION COST ("OPCC")
OFFSITE SANITARY SEWER IMPROVEMENTS
121 AND INDEPENDENCE RETAIL CENTER

I. OFFSITE SANITARY SEWER IMPROVEMENTS

Item	Description	Qty.	Amount	Total Cost
1.	21" SDR-35 (F679) Sewer Pipe	5,000 LF	\$ 144.12	\$ 720,600.00
2.	30" Steel Encasement by Bore	210 LF	\$ 830.00	\$ 174,300.00
3.	Aerial Crossing (96 LF)	1 LS	\$ 60,000.00	\$ 60,000.00
4.	Manhole 5' Dia.	13 EA	\$ 8,500.00	\$ 110,500.00
5.	Manhole 5' Dia. Drop	2 EA	\$ 15,000.00	\$ 30,000.00
6.	Connect to Existing Sewer	1 EA	\$ 10,000.00	\$ 10,000.00
7.	Concrete Encasement	70 LF	\$ 50.00	\$ 3,500.00
8.	Remove Existing 18" Sewer	30 LF	\$ 25.00	\$ 750.00
9.	Rem & Rep Barbed Wire Fence	990 LF	\$ 7.00	\$ 6,930.00
10.	Rem & Rep Wood Rail Fence	110 LF	\$ 25.00	\$ 2,750.00
11.	Rem & Rep Chain Link Fence	125 LF	\$ 30.00	\$ 3,750.00
12.	Rem & Rep Planter Beds	1 LS	\$ 8,500.00	\$ 8,500.00
13.	Rem & Rep Wood Sign	1 LS	\$ 750.00	\$ 750.00
14.	Rem & Rep Concrete Pavement	900 SY	\$ 100.00	\$ 90,000.00
15.	Rem & Rep Gravel Drive	665 SY	\$ 30.00	\$ 19,950.00
16.	Rem & Rep Conc Retaining Wall	120 LF	\$ 140.00	\$ 16,800.00
17.	Hydro-Mulch	8,450 SY	\$ 0.50	\$ 4,225.00
18.	Silt Fence	2,750 SY	\$ 2.50	\$ 6,875.00
19.	Rock Berm	200 LF	\$ 60.00	\$ 12,000.00
20.	Construction Entrance	1 EA	\$ 3,000.00	\$ 3,000.00
21.	Barricades	1 LS	\$ 5,000.00	\$ 5,000.00
22.	Testing (Air, Mandrel, T.V.)	3,802 LF	\$ 1.00	\$ 3,802.00
23.	Trench Safety	3,802 LF	\$ 1.00	\$ 3,802.00
24.	Survey	3,802 LF	\$ 1.00	\$ 3,802.00
25.	36" Sanitary Sewer Pipe	460 LF	\$ 198.00	\$ 91,308.00
	<u>SUBTOTAL</u>			\$ <u>1,392,894.00</u>
	Contingency		% 20	\$ 278,579.00
GRAND TOTAL – OFFSITE SANITARY SEWER IMPROVEMENTS				\$ <u>1,671,473.00</u>

EXHIBIT "D"

ESTIMATED SANITARY SEWER IMPACT FEES

***FOR THE 121 AND INDEPENDENCE RETAIL CENTER
PRELIMINARY SITE PLAN***

[One (1) Page Attached]



Applicant:

Case Number: PSP08-0010

Date: 10/3/2008

Service Area (select from list): D (Southeast)

% of the Maximum Fee to be Assessed: 60%

Land Uses (select from list):

Development Unit

of Units:

**Impact Fee Per
Development Unit:**

Roadway Impact Fee:

[illegible][illegible]

TOTAL ROADWAY IMPACT FEE: \$

Meter Size / Type (select from list):

of Meters:

Impact Fee Per Meter:

Water Impact Fee:

[illegible][illegible]**TOTAL WATER IMPACT FEE: \$**

Note: Impact Fee calculated based upon number of domestic water meters - do not include irrigation meters.

Motor Size / Type (select from list):

of Mothers:

Impact Fee Per Male.....

Wastewater Impact Fee:[illegible]

9
1

\$	12,427.00	\$	111,845.00
\$	65,243.00	\$	65,243.00

TOTAL WASTEWATER IMPACT FEE: \$ 177,088.00

TOTAL IMPACT FEE: \$ 177,088.00

IMPACT FEES MAY BE REDUCED THROUGH A DEVELOPMENT AGREEMENT. Escrow may be required for items including, but not limited to, turn lanes, median openings, median planting, and sidewalks.